IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4402 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes. : YES

2. To be referred to the Reporter or not? Yes. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO

5. Whether it is to be circulated to the Civil Judge? : NO
No.

DASHRATHLAL RAMNIKLAL THAKKER

Versus

MANDAL NAGARIK SAHKARI BANK LIMITED

Appearance:

MR NJ NANAVATI FOR GM JOSHI for Petitioners

MS BANNA S DUTTA for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 30/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioners for issuance of a writ of mandamus or an appropriate writ, order or direction, quashing and setting aside the action of the authorities of rejection of nomination forms of the petitioner at the election to office bearers of

Mandal Nagrik Co-operative Bank Limited -respondent no.1 herein.

2. The case of the petitioners was that the respondent no.1 Bank is a co-operative bank. It was to hold election of Board and Directors in accordance with the provisions of the Gujarat Co-operative Societies Act, 1961. Since term of three Directors of the Board was over, election notification was issued on 17th May, 1999. In all 17 persons filed their nomination forms and on scrutiny, on flimsy, false and frivolous grounds, 10 nomination forms were rejected by the respondents. The petitioners are four of them who have approached this court contending that the grounds weighed with the respondent authorities for rejecting the nomination forms were illegal, arbitrary, false, frivolous and flimsy. A prayer was, therefore, made to set aside, order of rejection of nomination forms, to quash and set aside the election process being illegal and contrary to statutory provisions and to pass an appropriate order in accordance with law. A prayer was also made that during the pendency and final disposal of the petition, the respondents may be directed to permit the petitioners to contest the election of the Board of Directors, considering them to be duly nominated candidates, or in the alternative to stay further proceedings of election scheduled to be held on 17th June, 1999.

3. On 14th June, 1999, orders rejecting nomination forms of the petitioners were passed which are at Annexure : B collectively to the petition. On 22nd June, 1999, the petition was filed. On 23rd June, 1999 it was placed for admission and notice was issued by the learned Single Judge by making it returnable on the next date. Direct service was permitted. On the next day, i.e. 24th June, 1999, the matter was again placed for hearing and further order was passed by the learned Single Judge in which it was, inter alia, mentioned that the notice was issued on the previous day and direct service was sought to be effected but the respondents had refused to accept the notice and affidavit to that effect was filed. After hearing the learned counsel for the petitioners, the learned Single Judge observed that there was substance in the contentions of the learned Counsel for the petitioners that nomination forms were rejected by the respondents on the ground "which are wholly jejune and not at all germane to the requirements of valid nomination papers". Rule was, therefore, issued and was made returnable and interim relief was granted in the following words:-

"It will be open for the Returning Officer either

to entertain the candidature of the present four petitioners and allow them to contest the elections of the Board of Directors of Mandal Nagrik Sahakari Bank Ltd., at Mandal or to hold the elections on the scheduled date, i.e. 27th June, 1999, but the result of such election which may be held on the scheduled date shall not be declared till further orders by this Court. It will be open for the respondents to apply for vacation/modification of this order at any time, even before the returnable date.

Direct service is permitted."

3. Matter was called out to day for final hearing.

4. I have heard Mr. N.D.Nanavati, learned Senior Counsel for Mr. G.M.Joshi for the petitioners and Ms. Banna Datta, learned counsel for the respondents. Mr. Nanavati submitted that the respondent no.1 Bank can be said to be "State" within the meaning of Article 12 of the Constitution, and hence the petition against it is maintainable. He submitted that rejection of nomination forms on flimsy ground can be said to be an act of arbitrary and unreasonable exercise of power, violative of Articles 14 and 19 of the Constitution and is subject to judicial review of this court. He also submitted that malafide and oblique motive on the part of the respondents is reflected in the fact that some how or other, they wanted to reject all nomination forms of other candidates and intended to extend the benefits to those whom they wanted to get elected as uncontested candidates. With that object in mind, the action is taken which the subject matter of this petition. He also stated that resultant effect of the impugned order was that though the election was held in June, 1999, as per interim order passed by the learned Single Judge, the results have not been declared and old Board of Directors, term of which is over, is continued even today. He, therefore, submitted that even if an alternative remedy is available, this is eminently a fit case in which extraordinary powers of this court are required to be exercised in the larger interest of justice.

5. Ms. Datta, on the other hand, supported the action taken by the authorities. Apart from the fact that rejection of the nomination forms was in accordance with the bye-laws of the first respondent society, there is a specific provision in Clause 11 of Bye-law 5, which

provides for scrutiny of nomination. It, inter alia, states that after the nomination forms will be submitted, there will be scrutiny of the said nomination forms. It provides further that all the candidates whose nomination forms are rejected, will be informed about such rejection with the reasons of rejection of the nomintions. It also enacts that an aggrieved candidate whose nomination form is rejected may prefer an appeal to the District Registrar within three days from the receipt of such rejection. The District Registrar will decide the said appeal in accordance with the provisions of the Act, Rules and Bye-laws. The decision of the District Registrar will be final. She, therefore, submitted that even if the contention of the learned counsel for the petitioners is well-founded that the rejection of nomination forms was contrary to law and on unsustainable grounds, alternative and equally efficacious remedy is available under the bye-laws and it was, therefore, obligatory on the part of the petitioners to approach the District Registrar and this Court may not interfere with the order of rejection of nomination forms in exercise of extraordinary jurisdiction of this court under Article 226 of the Constitution of India.

6. In my opinion, the preliminary objection raised on behalf of the respondent is well-founded and must be accepted. Ordinarily, in election matters, this court will be loathe to exercise extraordinary jurisdiction under Article 226 of the Constitution, particularly when election process is in progress. Usually, only after election is over and results are declared, an aggrieved party may approach a competent Tribunal by filing an election petition. Here the question is of validity or otherwise of rejection of the nomination forms. Obviously election process had already started. Under the circumstances, a specific by-law has been made which deals with the cases of illegal rejection of nomination forms. Bye-law 5 provides that if nomination form of any candidate is wrongly rejected, such person can approach the District Registrar within a period of three days from the receipt of the order and the District Registrar will decide the question in accordance with law. When such a provision is made in the bye-law itself, it would not be appropriate to entertain a petition under Article 226 of the Constitution.

7. For the foregoing reasons, the petition deserves to be dismissed and is accordingly dismissed without observing anything on merits. Rule is discharged. Interim relief stands vacated. No order as to costs.

8. Mr. Joshi, learned counsel for the petitioners prays that ad-interim relief was granted by the learned Single Judge and is operative since June, 1999. The petitioners will approach the District Registrar immediately, but in the meantime, interim relief which was granted, may be continued.

9. I am unable to accede to the above prayer made by Mr. Joshi. It cannot be forgotten that the election of Board of Directors was held in June, 1999 and till today i.e. till the end of March, 2000, result has not been declared for about nine months pursuant to the interim order passed by the learned Single Judge. The prayer, therefore, cannot be granted and is rejected.

Date:30/3/2000. (C.K.THAKKER,J.)
ccshah